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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/789,858  
Filing Date: February 27, 2004  
Appellant(s): CASANOVA, JULIO

**MAILED  
OCT 25 2007  
GROUP 3700**

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Marcus P. Dolce  
For Appellant

**EXAMINER'S ANSWER**

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This is in response to the appeal brief filed on 7/19/07 appealing from the Office action mailed 12/20/06.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Claims 1,3,4,6-11,13,14,20,22-24,26-31,33,34 and 40 have been rejected under 35 U.S.C. 103 as being unpatentable over PCT Publication No. WO 01/98170 to Casanova in view of US 3,743,084 to Douglas and/or U.S. 6,253,920 to Kallgren.

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In the final rejection, the examiner made a typographical error which resulted in independent claim 22 missing from paragraph 4 of the Final Office Action. However, the limitation in claim 22 is covered by the references set out in paragraph 4. The dependent claims 23-24,26-31,33-34 dependent upon claim 22 either directly or indirectly have all been rejected under the same set of references. In addition, the Interview Summary issued on April 12, 2007 addressed the issue and appellant was informed of the typographical mistake. Hence, the rejection set forth in paragraph 4 incorporated claim 22.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

WO 01/98170	CASANOVA	12- 2001
WO 01/98171	MILLER	12-2001
3,743,084	DOUGLAS	7-1973
6,253,920	KALLGREN	7-2001
D 479126	KUMAKURA et al.	9-2003
5,957,358	GETZ et al.	9-1999

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 112***

1. Claims 1-14, 19-20,22-34,39-40 are rejected under 35 U.S.C. 112, first paragraph,

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as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 22 require that none of the modules can be removed from the cover when the cover is over all of the at least two modules. The cardboard box 14 shown in Figure 2 has openings on both sides which allows removal of at least one of the modules. Similarly, the shrink wrap cover may provide wrapping only on the top, front, rear and bottom surfaces and render the side surfaces open for removal of part of a module. Even if the shrink wrap material is over six sides of the modules, the description does not disclose whether the wrapping entirely covers all six sides or partially covers six sides of the modules.

Figure 1 of the drawing has reference numeral 14 pointing to the edge of the battery package. The arrow itself is not indicative of a cover that entirely covers all sides of the package. At most, it would only cover an edge of the package. Hence, the new language introduced by applicant is considered new matter and is not permitted in the specification or the claims.

2. Claims 1-14, 19-20, 22-34, 39-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear how the cover prevents the module from removal while the cover is over the modules as recited in claims 1 and 22.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1,3-4,6-11,13-14,20,22-24,26-31,33-34,40 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Casanova (WO 01/98170) in view of Douglas (US 3,743,084) and/or Kallgren.

Casanova discloses a display package that houses batteries. The package has a base 34 and first and second faces. A pocket is formed on the base. A transparent lid 36 is placed over the second face of the base and a card 14 is over the lid. Casanova has non-rotation features 76,78 to prevent rotation of the batteries while in the pocket or compartment.

However, Casanova does not disclose two separate modules that overlap with one another. It also lacks a cover for enclosing the modules. Douglas teaches a carrier-dispenser package for elongated objects or small round objects. The purpose of Douglas's invention is to provide a compact package for a maximum number of articles to be held in a minimum amount of space. By selectively constructing the compartments onto separate sheets and then coupling the sheets to form a single layer of commodities, less bulk space is needed. Douglas shows in Figures 1,5 and 6, the various methods of

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providing staggered compartment in overlap form. In Figure 1, the module 60 overlaps the module 50. Each module has a base layer 51,61 and a lid layer 52,62. For Figure 6, the module 80 overlies the module 90. Each module has a base layer 81,91 and a lid layer 82,92. The modules are separate units and can be secured by spring, hinge, band wraps, rubber band, etc. The modules can be secured together within a cover 10 or a cover 70. The cover comes in a variety of forms such as over wrap or shrink wrap. The modules hence do not permit removal thereof while within the cover.

Kallgren also teaches a blister pack with a plurality of blister compartments formed by a base and a cover. The blister packs 2,3 are separated at element 9 and are considered as two separate modules 2,3. The distance between the blisters 4 is predetermined so when the blister 4 of module 3 engages between the blisters 4 of the other module 2, the blisters of module 2 offset or overlap the blister of module 3. In view of the teachings, it would have been obvious to an artisan at the time the invention was created to utilize this application to store more articles in a compact and secured manner.

5. Claims 2,12 and 32 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claims 1 and 22, respectively, in paragraph 4, further in view of Official Notice.

With respect to claim 2, more than two modules are conventionally stored within a container or cover for shipment purposes. It would have been obvious to one of ordinary skill in the art to store at least two modules in a package to reduce transportation costs.

With respect to claims 12 and 32, it would have been obvious to provide any desired number of pockets such as 5 for each module. In addition, applicant has not pointed to the specific effect of having only four or five pockets that would render the combination ineffective.

6. Claims 1,3-5,10-11,13-14,19,20,22-25,30,31,33-34,39,40 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Kumakura et al (US D479,126) in view of Douglas (US 3,743,084) and/or Kallgren (US 6,253,920). Kumakura et al. discloses a display package that houses batteries. The package has a base with first and second faces. As obvious and evident from the drawing, the base is the layer with protruding pocket. The side with the pocket is considered the first face and the side facing the lid in Figure 5 is the second face. At least one pocket is formed on the base. Kumakura et al. does not disclose a cover or overlapping of two or more packages. However, Douglas teaches a carrier-dispenser package for elongated objects or small round objects. The purpose of Douglas's invention is to provide a compact package for a maximum number of articles to be held in a minimum amount of space. By selectively constructing the compartments onto separate sheets and then coupling the sheets to form a single layer of commodities, less bulk space is needed. Douglas shows in Figures 1,5 and 6, the various methods of providing staggered compartment in overlap form. In figure 1, the module 60 overlaps the module 50. Each module has a base layer 51,61 and a lid layer 52,62. For Figure 6, the module 80 overlies the module 90. Each module has a base layer 81,91 and a lid layer 82,92. The modules can be secured together within a cover 10 or a cover 70. The cover comes in a variety of forms such as over wrap or



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shrink wrap. The modules hence do not permit removal thereof while within the cover.

Separate modules are easily separable upon removal of the cover.

Kallgren also teaches a blister pack with a plurality of compartments formed by a base and a cover. The blister packs 2,3 are separated at element 9 and are considered as two separate modules 2,3. The distance between the blisters 4 is predetermined so when the blister 4 of module 3 engages between the blisters 4 of the other module 2, the blisters of module 2 offset or overlap the blister of module 3. In view of the teachings, it would have been obvious to an artisan at the time the invention was created to stagger or overlap the modules to store more articles in a compact and secured manner. It would also have been obvious to provide the cover to secure the modules together.

7. Claims 2 and 12,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claims 1 and 22, respectively, in paragraph 6, further in view of Official Notice.

With respect to claim 2, more than two modules are conventionally stored within a container or cover for shipment purposes. It would have been obvious to one of ordinary skill in the art to store at least three modules in a package to reduce transportation costs.

With respect to claims 12 and 32, it would have been obvious to provide any desired number of pockets such as 5 for each module. Inasmuch as that is conventionally known, it is also a design choice. In addition, applicant has not pointed to the specific effect of having only four or five pockets that would render the combination ineffective.

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8. Claims 6-9 and 26-29 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references applied above with respect to claims 1 and 22 of paragraph 6, respectively, further in view of Casanova (WO 01/98170 A2). Kumakura as modified above does not disclose non-rotational features in a battery pack. Casanova discloses a display package that houses batteries. The package has a base 34 and first and second faces. A pocket is formed on the base. A transparent lid 36 is placed over the second face of the base and a card 14 is over the lid. Casanova has a non-rotation features 76,78 to prevent rotation of the batteries. It would have been obvious in view of Casanova to provide non-rotational feature to prevent movement of the batteries. It would also have been obvious to provide a card over the lid to strengthen the compartments and to provide advertising information.

9. Claims 21 and 41 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (WO 01/98171) in view of Kallgren (US 6,253,920) and Getz et al. (US 5,957,358) and Douglas. Miller discloses a display package that houses batteries. The package has a base and first and second faces. A pocket is formed on the base. A lid is placed over the second face of the base and a card 14 is over the lid. Miller does not disclose a cover or overlapping of two or more packages. Getz et al. discloses a plurality of battery packages within a cover or container. Each four or five batteries are considered a module. As shown in Figure 6, the battery in one of the modules is situated between the space of two batteries in another module. This is to maximize the volume of the container. The two separate modules are easily separable upon removal of the cover. Kallgren also teaches a blister pack with a plurality of compartments formed by a base

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and a cover. The blister packs are separated at 9 and are considered as two modules. The modules overlap one another.

Douglas teaches a carrier-dispenser package for elongated objects or small round objects. The purpose of Douglas 's invention is to provide a compact package for a maximum number of articles to be held in a minimum amount of space. By selectively constructing the compartments onto separate sheets and then coupling the sheets forming a single layer of commodities, less bulk space is needed. Douglas shows in Figures 1,5 and 6, the various methods of providing staggered compartment in overlap form. In figure 1, the module 60 overlaps the module 50. Each module has a base layer 51,61 and a lid layer 52,62. For Figure 6, the module 80 overlies the module 90. Each module has a base layer 81,91 and a lid layer 82,92. The modules are separate units and can be secured by spring, hinge, band wraps, rubber band, etc. The modules can be secured together within a cover 10 or a cover 70. The cover comes in a variety of forms such as over wrap or shrinkwrap. The modules hence do not permit removal thereof while within the cover.

In view of the teachings of the secondary references, it would have been obvious to an artisan at the time the invention was created to utilize this application to store more articles in a compact and secured manner.

10. Claims 21 and 41 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Kumakura et al (US D479,126) in view of Kallgren (US 6,253,920) and Getz et al. (US 5,957,358) and Douglas. Kumakura et al. discloses a display package that houses batteries. The package has a base and first and second faces. At least one

pocket is formed on the base. A lid is placed over the second face of the base.

Kumakura et al. does not disclose a cover or stacking of two or more packages.

However, Getz et al. discloses a plurality of battery packages within a cover or container.

Each four or five batteries are considered a module. As shown in Figure 6, the battery in one of the modules is situated between the space of two batteries in another module. This is to maximize the volume of the container. The two separate modules are easily separable upon removal of the cover. Kallgren also teaches a blister pack with a plurality of compartments formed by a base and a cover. The blister packs are separated at 9 and is considered as two modules. The modules overlap one another. It would have been obvious in view of Kallgren and Getz et al. to overlap the compartments to maximize the volume within the cover.

Douglas teaches a carrier-dispenser package for elongated objects or small round objects. The purpose of Douglas 's invention is to provide a compact package for a maximum number of articles to be held in a minimum amount of space. By selectively constructing the compartments onto separate sheets and then coupling the sheets forming a single layer of commodities, less bulk space is needed. Douglas shows in Figures 1,5 and 6, the various methods of providing staggered compartment in overlap form. In figure 1, the module 60 overlaps the module 50. Each module has a base layer 51,61 and a lid layer 52,62. For Figure 6, the module 80 overlies the module 90. Each module has a base layer 81,91 and a lid layer 82,92. The modules are separate units and can be secured by spring, hinge, band wraps, rubber band, etc. The modules can be secured together within a cover 10 or a cover 70. The cover comes in a variety of forms such as

over wrap or shrink wrap. The modules hence do not permit removal thereof while within the cover. In view of the teachings of the secondary references, it would have been obvious to an artisan at the time the invention was created to overlap blister compartments from separate modules in a compact and secured manner.

#### **(10) Response to Argument**

##### **A. Rejection of Claims 1-14,19,20,22-34,39 and 40 Under 35 U.S.C. § 112, First Paragraph, as Failing to Comply with the Written Description Requirement**

Claims 1-14,19,20,22-34,39 and 40 failed to meet the requirement of 35 U.S.C. §112, first paragraph, as the claims introduced new matter into the application.

Appellant pointed to MPEP §2163 to reference the written description requirement. Specifically, the specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. The issue raised in this case is whether the original application provides “adequate support” for the claims at issue.

The new limitation “none of the modules are able to be removed from within the cover while the cover is over all of the at least two separate modules” was incorporated into claims 1 and 22 in the November 6, 2006 response. The limitation is considered new matter on several grounds. First, the cardboard box 14 shown in Figure 2 has openings on both sides which allows removal of at least one of the modules. Similarly, the shrink wrap cover may provide wrapping only on the top, front, rear and bottom surfaces and render the side surfaces open for removal of a part of a module. Second, assuming that

the shrink wrap material is over six sides of the modules, the description on page 6 does not disclose whether the wrapping entirely covers all six sides or partially covers six sides of the modules. Figure 1 of the drawing has reference numeral 14 pointing to the edge of the battery package. The arrow itself is not indicative of a cover that entirely covers all sides of the package. Moreover, the cover itself can be comprised of one or more thin bands as discussed in paragraph (0027) of the description. The thin band undoubtedly would permit a user to remove at least one module when the band is over the modules. Accordingly, the new language introduced by appellant is considered new matter as the original specification and drawing failed to provide sufficient disclosure for the new limitation. That is, appellant did not address in his original disclosure of how the cover prevents removal of the modules when the modules are within the cover.

**B. Rejection of Claims 1-14,19,20,22-34,39 and 40 Under 35 U.S.C. § 112, Second Paragraph, as Being Indefinite**

Appellant submits that the written description to support the limitation in question has been provided. However, the claim limitation “none of the modules are able to be removed from within the cover while the cover is over all of the at least two separate modules” lacks clarity under §112, second paragraph. The description has not provided the support for the limitation. No where does the specification clearly states that all six sides of the modules are entirely covered so no module can be removed from the cover while the cover is over all of the at least two separate modules. Furthermore, the drawing does not support the claimed language. Although appellant can define the terminology of

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the claim limitation, appellant is claiming beyond the boundary of his disclosed invention.

**C. The Legal Standard for Rejecting the Claim as Being Obvious**

No argument is presented in this section.

**D. Rejection of Claims 1,3,4, 6-11,13,14,20,22,23,24,26-31,33,34 and 40 under 35 U.S.C. § 103(a) as Being Obvious Over PCT Publication No. WO 01/98170 to Casanova in view of U.S. Patent No. 3,743,084 to Douglas and/or U.S. Patent No. 6,253,920 to Kallgren**

Initially, appellant argues that the examiner has not stated how the references are combined and the final Office Action has not set forth the proposed modification of the applied references necessary to arrive at the claimed subject matter as required by MPEP §706.02(j).

§ 706.02(j) states that the examiner should set forth in the Office action:

“(A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate.

(B) the difference or differences in the claim over the applied reference(s),

(C) the proposed modification for the applied reference(s) necessary to arrive at the claimed subject matter,

(D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification.”

As shown in the rejections above, the examiner has set forth the relevant teachings of the base reference and the secondary references, the claim limitations not met by the primary reference, the proposed modification and why one of ordinary skill in the art would make the modification. There is no deficiency as erroneously pointed out by appellant. In fact, if appellant had difficulty in understanding the proposed modification, appellant should have contacted the examiner for an interview after the first Non-Final Office Action. Moreover, judging from the responses, appellant did not appear to have difficulties in making his argument based from the rejections. Therefore, the rejections were properly made.

#### **1. Claims 1,13,14 and 20**

Appellant argues on page 12 that Casanova, when combined with the other cited references to reject claim 1, does not allow at least one pocket of a first one of the at least two separate modules being located between a pair of pockets of the second one of at least two separate modules. The argument here appears to be in the spacing of the modules.

Casanova in view of Douglas and Kallgren would provide sufficient spacing between the modules to arrive at the claimed invention. Noticeably, Douglas teaches in Figure 2, the staggering of compartments 53 and 63. Each row on each of the module 50,60 has the same number of compartments, but different in the position of the compartments. The different pattern in the adjacent row is an alternating arrangement which allows the mating of one module 50 with another module 60 to form an



overlapping arrangement. The critical teaching here is the predetermined spacing between the compartments in order for the overlapping to occur.

As for Kallgren, the blister packs 2,3 are separated at element 9 and are considered as two separate modules 2,3. The distance between the blisters 4 is predetermined so when the blister 4 of module 3 engages between the blisters 4 of the other module 2, the blisters of module 2 offset or overlap the blister of module 3.

The secondary references teach the deficiency of Casanova, which is the lacking of the two modules overlapping one another. As stated in Kallgren, the reasons to provide the overlapping arrangement is to avoid the bulkiness of the blister package, the expense of storing, shipping and transporting of the package. Similarly, Douglas teaches a compact package for a maximum number of articles to be held in a minimum number of spaces. In view of the teachings and to make the packages of Casanova more desirable for storing and shipping purposes, one of ordinary skill in the art would make two modules of Casanova in an overlapping engagement in order to achieve the purposes stated.

**i. The Casanova '017 publication in view of the Douglas '084 patent**

Appellant argues that he is unable to ascertain as to how the references of Casanova is combinable with the reference of Douglas. The argument is directed to the lacking of two separate modules in both references. The examiner agrees that Casanova

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lacks two separate modules that overlap one another. However, the Douglas patent has two modules 50,60 that meets the claim limitation of “separate modules.”

As a matter of defining the terminology of separate modules, the term “separate” is defined as “to keep apart or divide” by *Dictionary.com Unabridged (v 1.1)* from Dictionary.com. Another definition is “to set or kept apart” or “to spaced apart” by *The American Heritage® Dictionary of the English Language, Fourth Edition*. The definitions above provided the basic affirmation that the term “separate” does not require two objects to be derived from two unconnected items. In fact, the separate objects may be from two elements that are connected but are of two distinct elements. The claim language never defined and thus never required the two modules not to be connected in any manner. Therefore, even though a linking panel 42 connects elements 50 and 60 and a linking panel 76 connects units 80 and 90, they are distinct elements and are set apart or spaced apart from one another by the linking panels.

Appellant further argues that a combination of these two references will not include a feature that none of the modules are able to be removed from within the cover while the cover is over all of the at least two separate modules. Appellant argues that the paired commodity holding units of the Douglas '048 patent will not include a pocket being located between a pair of pockets on a second one of the paired units, each paired unit cannot be seen as a separate module.

As stated above, elements 50 and 60 in the Douglas reference are considered as a paired unit with two separate modules. Each holding unit has blister compartments or pockets that overlap the corresponding pocket of another module. Since one of the

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holding units includes a pocket being located between a pair of pockets on a second one of the holding units, each holding unit in the paired unit is a separate unit or module. Please refer to Figure 1 on the positioning of the compartments on both holding units which clearly contradicts appellant's argument.

Appellant further argues on the 2<sup>nd</sup> paragraph of page 13 that in order for Casanova as modified to include subject matter that read on claim 1, one of the paired units itself in Douglas would have to separate. Appellant further states that Douglas on column 1, lines 48-63 teaches away from separating the holding units. However, appellant never required the modules to be completely separated from one another. That is, requiring the units to be unconnected directly or indirectly from one another. Therefore, to argue that claim 1 requires the holding units to separate in an error or a limitation narrowly construed by appellant that has not been claimed.

Moreover, appellant's interpretation on lines 48-63 is incorrect. Douglas did not require the assemblage not to be separated. The assemblage can be secured by means of a spring hinge, a living hinge, or a pressure-responsive adhesive. With a pressure-responsive adhesive applied to the surface of the mating sheet, a user can uncouple the units when removal of the content is required. That is, the pair unit can be separated for removal. See column 1, lines 61-63.

Appellant also argues on the last paragraph of page 13 that covers 10 and 70 of Douglas reference allow the modules to be removed from within the cover with openings on each side of the cover. Appellant then refers to the examiner's § 112 rejection which

rejected the claims based on the openings on the side surfaces of appellant's cover that would not prevent none of the modules from removal.

However, from column 1, lines 57 to column 2, line 16, Douglas lists devices in addition to the spring hinge and pressure-responsive adhesive for a cover. For example, a rubber band, a band wraps or over wraps, outer covers such envelopes, case where the assembly maybe placed inside and can be closed and secured, an outer case with a plurality of panels which surround the assembly and has means attached for securing panels in a folded position about the units. In view of the variety of coupling means, the shrink wrap cover or an outer cover would prevent the removal of the module when the shrink wrap completely covers the modules.

**ii. The Casanova '017 publication in view of the Kallgren '920 patent**

Appellant argues that the resulting combination would not include two separate modules because everything in Kallgren is connected together. However, the term "separate" does not require the modules to be entirely unconnected directly or indirectly. It only requires the modules to be "kept apart" or "spaced apart." The modules of Kallgren are evidently spaced apart from one another. Therefore, appellant has not claimed the limitation set out in his argument.

Appellant argues on page 25 that Kallgren does not "expressly" or "necessarily" teach that none of the modules are able to be removed from within a cover while the cover is over at least two modules as claimed in claim 1. Appellant's argument appears

to be similar to the examiner's position on appellant's new matter issue. Appellant did not "expressly" or "necessarily" disclose non-removal of the modules while in the cover.

Kallgren discloses on column 2, lines 66-67 and lines 1-3 of column 3 that the modules are stored within a package and the package is "openable from one end surface or side wall." It is clear from the disclosure of Kallgren that the modules are enclosed within the cover and it is "necessary" to open the cover or package to retrieve one of the modules. In other words, the modules are completely covered therewithin and it would be necessary to remove or open part of the cover in order to remove at least one module.

**iii. The Casanova '017 publication in view of the Douglas '084 patent and the Kallgren '920 patent**

The response to the arguments with regard to the combination of the three references has been provided in the sections above.

**iv. Conclusion**

As set forth above, appellant has not overcome the combination of the references and therefore claims 1,13,14 and 20 are not patentable over the prior art of record.

**2. Claim 3**

Appellant argues on page 14-15 that the combination to reject claim 3 would not include a lid over a second face of a base of each module. But as applicant later indicated in the same paragraph, the rejection in paragraph 4 of the Office Action pointed to

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Casanova's element 36 as a lid over the second face of the base of each module. It is not clear why appellant would assume that the lid element would not be included in the combination of the rejection since it is part of Casanova's disclosure and it is relevant to reject claim 3 of the application. Therefore, claim 3 remains to be unpatentable over the combination of the references stated above.

### **3. Claim 4**

Appellant argues that claim 4 defines patentable subject matter because the rejection would not include any transparent lid. As indicated above, Casanova has an element 36 which is a transparent lid to cover the second face of the module. Therefore, claim 4 is unpatentable over the applied prior art.

### **4. Claim 6**

Appellant argues that the references applied failed to provide any lid and card as required in claim 6. Casanova discloses a transparent lid 36 and a card 12 that encloses part of the battery compartment. The card positions over the lid and the second face of each module. The claim limitation thus has been met.

### **5. Claim 7**

Claim 7 is unpatentable for the same reasons set forth with regard to claim 3 and claim 6 above.

### **6. Claim 8**

Appellant argues that the combination of the references would not include the feature of claim 8. Claim 8 is rejected under Casanova in view of Douglas and/or Kallgren. In paragraph 4 of the final rejection, the examiner began the rejection by referencing Casanova. However, on line 5 of the paragraph, the examiner inadvertently referred to Miller for the non-rotating feature when Miller was not an applied reference for that particular rejection. Casanova was the intended reference and this is evidenced by the reference elements 76,78 as the non-rotating features. The examiner has made the appropriate correction in this Answer and claim 8 has been properly rejected.

### **7. Claim 9**

Claim 9 is unpatentable over the same reason as indicated with regard to claim 8 above. Casanova's non-rotation feature has at least one tab extending into the pocket, the at least one tab being configured to frictionally engage the battery placed within the pocket. See pages 11-14 of Casanova publication. Hence, Casanova has already disclosed the claimed feature and applicant has not overcome the rejection.

### **8. Claim 10**

Appellant argues with respect to claim 10 that the combination would not teach identical number of blisters because the secondary references do not teach the same number of blisters. Appellant referred to Figure 6 of Douglas which showed different number of blisters. However, appellant appears to ignore the fact that Douglas teaches

three rows of blister compartments wherein each row has three compartments. Module 50 is identical to module 60 as shown in Figure 2. Therefore, contrary to appellant's belief, Douglas does not limit the modules to different number of blister compartments, but the compartments can be identical.

With regard to Kallgren, the argument made on page 16 appears to be inaccurate. Appellant argues that Kallgren specifically teaches away from modules having the same number of blisters. However, Kallgren actually referred to blister packages that face one another and not in overlapping fashion. The disclosure does not appear to be relevant to the rejection. Furthermore, Douglas supplied the teaching of identical modules as required by the claim.

#### **9. Claim 11**

Claim 11 requires only four pockets for the modules. Casanova teaches four pockets or compartments for storing the batteries. Therefore, in view of the teaching of Douglas in Figure 2 and/or the disclosure of Kallgren, the four compartments on the first module will overlap the four compartments on the second module. In addition, the number of modules and the number of blister compartments on each module are not patentable subject matters over the prior art as an artisan in the art would readily manufacture the desired number of blister compartment as necessary.

#### **10. Claim 23**

Claim 23 depends from claim 22 which Appellant argues that claim 22 has not



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been rejected. Appellant claims that he has brought this to the examiner's attention in his response to the first Office Action and the final Office Action continues to reject claim 23 without rejecting claim 22. But the claims were not rejected under Casanova in view of Douglas and Kallgren in the First Non-Final Office Action. Appellant amended the claims in his response on 11/06/2006 to the Non-Final Office Action which caused grounds for the new rejections in the Final Office Action. In the final rejection, the examiner made a typographical error which resulted in independent claim 22 missing from paragraph 4 of the Final Office Action. However, the limitation in claim 22 is covered by the references set out in paragraph 4. The dependent claims 23-24,26-31,33-34 dependent upon claim 22 either directly or indirectly have all been rejected under the same set of references. In addition, the Interview Summary issued on April 12, 2007 addressed the issue and appellant was informed of the typographical mistake. Hence, the rejection set forth in paragraph 4 incorporated claim 22.

Appellant argues on page 17 that the combination to reject claim 23 would not include a lid over a second face of a base of each module. But the rejection in paragraph 4 of the Office Action pointed to Casanova's element 36 as a lid over the second face of the base of each module. It is not clear why appellant would assume that the lid element would not be included in the combination of the rejection since it is part of Casanova's disclosure and it is relevant to reject claim 23 of the application. Therefore, claim 23 remains to be unpatentable over the combination of the references stated above.

**11. Claim 24**

Appellant argues that claim 24 defines patentable subject matter because the rejection would not include any transparent lid. As indicated above, Casanova has an element 36 which is a transparent lid to cover the second face of the module. Therefore, claim 24 is unpatentable over the applied prior art.

**12. Claim 26**

Appellant argues that the references applied failed to provide any lid and card as required in claim 26. Casanova discloses a transparent lid 36 and a card 12 that encloses part of the battery compartment. The card positions over the lid and the second face of each module. The claim limitation thus has been met.

**13. Claim 27**

Claim 27 is unpatentable for the same reasons set forth with regard to claim 23 and claim 26 above.

**14. Claim 28**

Appellant argues that the combination of the references would not include the feature of claim 28. Claim 28 is rejected under Casanova in view of Douglas and/or Kallgren. In paragraph 4 of the final rejection, the examiner started the rejection by referencing Casanova. However, on line 5 of the paragraph, the examiner inadvertently stated that Miller has the non-rotating feature when Miller was not an applied as a

reference for that particular rejection. The continue disclosure of Casanova was intended. This is evident by the reference elements 76,78 as the non-rotating features and the elements can only be found in the reference of Casanova. The examiner has made the appropriate correction in this Answer and claim 28 is properly rejected as Casanova already discloses the claimed features.

#### **15. Claim 29**

Claim 29 is unpatentable over the same reason as indicated with regard to claim 28 above. Casanova's non-rotation feature has at least one tab extending into the pocket, the at least one tab being configured to frictionally engage the battery placed within the pocket. See pages 11-14 of Casanova publication. Hence, Casanova has already disclosed the claimed feature and applicant has not overcome the rejection.

#### **16. Claim 30**

Appellant argues with respect to claim 30 that the combination would not teach identical number of blisters because the secondary references do not teach the same number of blisters. Appellant referred to Figure 6 of Douglas which showed two different modules with different number of blisters. However, appellant appears to ignore the fact that Douglas teaches three rows of blister compartments wherein each row has three compartments. Module 50 is identical to module 60 as shown in Figure 2. Therefore, contrary to appellant's belief, Douglas does not limit the modules to different number of blister compartments, but the compartments can be identical.

**17. Claim 31**

Claim 31 requires only four pockets for the modules. Casanova teaches four pockets or compartments for storing the batteries. Therefore, in view of the teaching of Douglas in Figure 2 and/or the disclosure of Kallgren, the four compartments of Casanova on the first module will overlap the four compartments on the second module. In addition, the number of modules and the number of blister compartments on each module are not patentable subject matters over the prior art as an artisan in the art would readily manufacture the desired number of blister compartment as necessary.

**18. Claims 33,34,40**

Appellant has not set forth the specific argument for these three claims. Appellant only referred to the independent claim 22 to which the claims depended upon. The examiner has responded above with regard to claim 22 and no further comment deemed necessary, as no specific argument has been made.

**E. Rejection of Claims 2,12 and 32 under 35 U.S.C. § 103(a) as Being Obvious Over “the references applied above with respect to claims 1 and 22” further in view of Official Notice**

**1. Claim 2**

Appellant did not set forth an argument except that claim 2 depends from claim 1

and it should be patentable because appellant believes claim 1 is patentable. However, the examiner has set out the reasonings for rejecting claims 1 and 2 above. Since claim 1 remains unpatentable, claim 2 is still unpatentable over the art applied.

## **2. Claim 12**

Appellant applied the same reasoning for claims 10 and 11 and argues that prior art of record teaches away from having five pockets for each module. But as discussed above in claims 10 and 11, the references do not teach away from having identical blister compartments. In fact, Douglas teaches that identical blister compartments are desirable in Figure 2 of the drawing. Appellant's argument remains to be unpersuasive.

## **3. Claim 32**

Claim 32 depends from claim 22 and requires the module to have only five pockets. Appellant raised the issue of claim 22 as being not rejected and alleges that claim 32 is therefore patentable over the prior art. The issue regarding claim 22 has been clarified above and claim 22 is rejected under Casanova in view of Douglas and/or the Kallgren reference.

Appellant further argues that the prior art of record teaches away from the combination where the modules include the same number of pockets. But as indicated in the #2 above with regard to claim 12, the references do not teach away from having identical blister compartments. In fact, Douglas teaches that identical blister compartments are desirable in Figure 2 of the drawing. In addition, with regard to

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Kallgren, the arguments made on pages 16 and 22 appear to be inaccurate. Appellant argues that Kallgren specifically teaches away from modules having the same number of blisters. However, Kallgren actually referred to blister packages that face one another and not in overlapping fashion. The disclosure therefore does not appear to be relevant to the rejection.

**F. Rejection of Claims 1,3-5,10,11,13,14,19,20,22-25,30,31,33,34,39 and 40 under 35 U.S.C. §103(a) as Being Obvious Over U.S. Design Patent No. D479,126 to Kumakura et al. in view of Douglas '084 patent and/or the Kallgren '920 patent.**

**1. Claims 1,3,5,13,14,19 and 20**

**i. The Kumakura et al. '126 patent in view of the Douglas '084 patent**

Appellant argues that he is unable to ascertain as to how the references of Kumakura et al is combinable with the reference of Douglas. The argument is directed to the lacking of two separate modules in both references. While the examiner agrees that Kumakura et al lacks two separate modules that overlap one another, this deficiency is not lacking in Douglas. The Douglas patent has two modules 50,60 that meet the claim limitation of "separate modules."

As a matter of defining the terminology of separate modules, the term "separate" is defined as "to keep apart or divide" by *Dictionary.com Unabridged (v 1.1)* from Dictionary.com. Another definition is "to set or kept apart" or "to spaced apart" by *The American Heritage® Dictionary of the English Language, Fourth Edition*. The

definitions above provided the basic affirmation that the term “separate” does not require two objects to be derived from two unconnected items. In fact, the separate objects may be from two elements that are connected but are of two distinct elements. The claim language never defined and thus never required the two modules not to be connected in any manner. Therefore, even though a linking panel 42 connects elements 50 and 60 and a linking panel 76 connects units 80 and 90, they are distinct elements and are set apart or spaced apart from one another by the linking panels.

Appellant further argues that a combination of these two references will not include a feature that none of the modules are able to be removed from within the cover while the cover is over all of the at least two separate modules. Appellant argues that the paired commodity holding units of the Douglas ‘048 patent will not include a pocket being located between a pair of pockets on a second one of the paired units, each paired unit cannot be seen as a separate module.

As stated above, elements 50 and 60 are considered as a paired unit with two separate modules. Each holding unit has blister compartments that overlap the corresponding compartment of another module. Since one of the holding units includes a pocket being located between a pair of pockets on a second one of the holding units, each holding unit in the paired unit is a separate unit or module. Please refer to Figure 1 on the positioning of the compartments on both holding units which clearly contradict appellant’s argument.

Appellant further argues on the 2<sup>nd</sup> paragraph of page 24 that in order for Kumakura et al. as modified to include subject matter that read on claim 1, one of the

paired units itself in Douglas would have to separate. Appellant further states that Douglas on column 1, lines 48-63 teaches away from separating the holding units. However, appellant never required the modules to be completely separated from one another. That is, requiring the units to be unconnected directly or indirectly from one another. Therefore, to argue that claim 1 requires the holding units to separate in an error or a limitation narrowly construed by appellant that has not been claimed.

Moreover, appellant's interpretation on lines 48-63 is incorrect. Douglas did not require the assemblage not to be separated. The assemblage can be secured by means of a spring hinge, a living hinge, or a pressure-responsive adhesive. With a pressure-responsive adhesive applied to the surface of the mating sheet, a user can uncouple the units when removal of the content is required. That is, the pair unit can be separated for removal. See column 1, lines 61-63.

Appellant also argues on the last paragraph of page 13 that covers 10 and 70 of Douglas reference allow the modules to be removed from within the cover with openings on each side of the cover. Appellant then refers to the examiner's § 112 rejection which rejected the claims based on the openings on the side surfaces of appellant's cover that would not prevent none of the modules from removal.

However, from column 1, lines 57 to column 2, line 16, Douglas listed devices in addition to the spring hinge and pressure-responsive adhesive for a cover. For example, a rubber band, a band wrap or over wrap, outer covers such envelopes, a case where the assembly maybe placed inside and can be closed and secured, an outer case with a plurality of panels which surround the assembly and has means attached for securing



panels in a folded position about the units. In view of the variety of coupling means, the shrink wrap cover or an outer cover would prevent the removal of the module when the shrink wrap completely covers the modules.

**ii. The Kumakura et al. '126 patent in view of the Kallgren  
'920 patent**

Appellant argues that the resulting combination would not include two separate modules because everything in Kallgren is connected together. However, the term “separate” does not require the modules to be entirely unconnected directly or indirectly. It only requires the modules to be “kept apart” or “spaced apart.” The modules of Kallgren are evidently spaced apart from one another. Therefore, appellant has not claimed the limitation set out in his argument.

Appellant argues on page 25 that Kallgren does not “expressly” or “necessarily” teach that none of the modules are able to be removed from within a cover while the cover is over at least two modules as claimed in claim 1. Appellant’s argument appears to be similar to the examiner’s position on appellant’s new matter issue. Appellant did not “expressly” or “necessarily” disclose non-removal of the modules while in the cover.

Kallgren discloses on column 2, lines 66-67 and lines 1-3 of column 3 that the modules are stored within a package and the package is “openable from one end surface or side wall.” It is clear from the disclosure of Kallgren that the modules are enclosed within the cover and it is “necessary” to open the cover or package to retrieve one of the

modules. In other words, the modules are completely covered therewithin and it would be necessary to remove or open part of the cover in order to remove at least one module.

**iii. The Kumakura et al. '126 patent in view of the Douglas  
'084 patent and the Kallgren '920 patent**

The response to the arguments with regard to the combination of the three references has been provided in the sections above.

**iv. Conclusion**

As set forth above, appellant has not overcome the combination of the references and therefore claims 1,3,5, 13,14, 19 and 20 are not patentable over the prior art of record.

**2. Claim 4**

Appellant argues that claim 4 defines patentable subject matter because the rejection would not include any transparent lid. However, It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the lid transparent, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### **3. Claim 10**

Appellant argues with respect to claim 10 that the combination would not teach identical number of blisters because the secondary references do not teach the same number of blisters. Appellant referred to Figure 6 of Douglas which showed different number of blisters. However, appellant appears to ignore the fact that Douglas teaches three rows of blister compartments wherein each row has three compartments. Module 50 is identical to module 60 as shown in Figure 2. Therefore, contrary to appellant's belief, Douglas does not limit the modules to different number of blister compartments, but the compartments can be identical.

With regard to Kallgren, the argument made on page 26 appears to be inaccurate. Appellant argues that Kallgren specifically teaches away from modules having the same number of blisters. However, Kallgren actually referred to blister packages that face one another and not in overlapping fashion. The disclosure does not appear to be relevant to the rejection. Furthermore, Douglas supplied the teaching of identical modules as required by the claim.

### **4. Claim 11**

Claim 11 requires only four pockets for the modules. Kumakura teaches four pockets or compartments for storing the batteries. Therefore, in view of the teaching of Douglas in Figure 2 and/or the disclosure of Kallgren, the four compartments on the first module will overlap the four compartments on the second module. In addition, the number of modules and the number of blister compartments on each module are not

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patentable subject matters over the prior art as an artisan in the art would readily manufacture the desired number of blister compartment as necessary.

**5. Claims 22,23,25,33,34,39 and 40**

**i. The Kumakura et al. '126 patent in view of the Douglas '084 patent**

Appellant argues that he is unable to ascertain as to how the references of Kumakura et al is combinable with the reference of Douglas. The argument is directed to the lacking of two separate modules in both references. While the examiner agrees that Kumakura et al lacks two separate modules that overlap one another, this deficiency is not lacking in Douglas. The Douglas patent has two modules 50,60 that meet the claim limitation of "separate modules."

The term "separate" does not require two objects to be derived from two unconnected items. In fact, separate objects may be from two elements that are connected but are of two distinct elements. The claim language never required the two modules not to be connected in any manner. Therefore, even though a linking panel 42 connects elements 50 and 60 and a linking panel 76 connects units 80 and 90, they are distinct elements and are set apart or spaced apart from one another by the linking panels.

Appellant's arguments on page 28-29 are duplicates of the arguments made above with regard to Kumakura et al. in view of Douglas. Therefore, the examiner's response remains the same for the corresponding arguments.

**ii. The Kumakura et al. '126 patent in view of the Kallgren  
'920 patent**

Appellant made the same arguments regard to Kumakura et al. in view of Kallgren as the argument made with regard to the rejection of claim 1 by Kumakura et al. in view of Kallgren. Therefore, the arguments have been responded to above.

**iii. The Kumakura et al. '126 patent in view of the  
Douglas'084 patent and the Kallgren '920 patent.**

As set forth above, appellant has not overcome the combination of the references and therefore the claims are not patentable over the prior art of record.

**iv. Conclusion**

Claim 22 is unpatentable and the dependent claims are not patentable as discussed and set out in the rejection.

**2. Claim 24**

As an initial matter, appellant's subsection heading appears to be an error. Claim 24 (this section) should be indicated as 6. Claim 24 and not 2. claim 24. However, the Examiner's Answer will follow the heading and subheading set out by appellant.

Appellant argues that claim 24 defines patentable subject matter because the rejection would not include any transparent lid. However, It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the lid

transparent, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### **3. Claim 30**

Appellant argues with respect to claim 30 that the combination would not teach identical number of blisters because the secondary references do not teach the same number of blisters. Appellant referred to Figure 6 of Douglas which showed two different modules with different number of blisters. However, appellant appears to ignore the fact that Douglas teaches three rows of blister compartments wherein each row has three compartments. Module 50 is identical to module 60 as shown in Figure 2. Therefore, contrary to appellant's belief, Douglas does not limit the modules to different number of blister compartments, but the compartments can be identical.

### **4. Claim 31**

Claim 31 requires only four pockets for the modules. Kumakura et al. teaches four pockets or compartments for storing the batteries. Therefore, in view of the teaching of Douglas in Figure 2 and/or the disclosure of Kallgren, the four compartments of Kumakura et al on the first module will overlap the four compartments on the second module. In addition, the number of modules and the number of blister compartments on each module are not patentable subject matters over the prior art as an artisan in the art would readily manufacture the desired number of blister compartment as necessary.

**G. Rejection of Claims 2,12 and 32 under 35 U.S.C. § 103(a) as Being Obvious Over  
“the references applied above with respect to claims 1 and 22” further in view of  
Official Notice**

**1. Claim 2**

Appellant did not set forth an argument except that claim 2 depends from claim 1 and it should be patentable because appellant believes claim 1 is patentable. However, the examiner has set out the reasoning for rejecting claims 1 and 2 above. Since claim 1 remains unpatentable, claim 2 is still unpatentable over the art applied.

**2. Claim 12**

Appellant applied the same reasoning for claims 10 and 11 and argues that prior art of record teaches away from having five pockets for each module. But as discussed above in claims 10 and 11, the references do not teach away from having identical blister compartments. In fact, Douglas teaches that identical blister compartments are desirable in Figure 2 of the drawing. Appellant's argument remains to be unpersuasive.

**3. Claim 32**

With regard to claim 32, appellant argues that claim 22 has not been rejected as being unpatentable over the Casanova publication in view of the Douglas '084 patent and/or the Kallgren '920 patent as discussed above. However, appellant seems to refer to

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the first set of rejection under Casanova when the claim in question is not rejected under Kumakura et al. Therefore, appellant's first argument doesn't appear to be appropriate.

Claim 32 depends from claim 22 and requires the module to have only five pockets. Appellant argues that the prior art of record teaches away from the combination where the modules include the same number of pockets. But as indicated in #2 above with regard to claim 12, the references do not teach away from having identical blister compartments. In fact, Douglas teaches that identical blister compartments are desirable in Figure 2 of the drawing. In addition, with regard to Kallgren, the arguments made on page 32 appear to be inaccurate. Appellant argues that Kallgren specifically teaches away from modules having the same number of blisters. However, Kallgren actually referred to blister packages that face one another and not in overlapping fashion. The disclosure therefore does not appear to be relevant to the rejection.

**H. Rejection of Claims 6-9 and 26-29 under 35 U.S.C. §103 as Being Obvious Over the "references applied above with respect to claims 1 and 22, respectively, further in view of Casanova WO 01/98170 A2"**

**1. Claim 6**

Appellant argues that Casanova in combination with the modified Kumakura et al. would not include any lid. However, Kumakura et al already has a lid and therefore is not deficient of that element. As to combining the card of Casanova with Kumakura et al, the reason for combination is not only to make the resulting combination more



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compact, but it also focuses on providing an area for advertisement and information.

Adding a thin layer of material would have been obvious to one of ordinary skill in the art to inform user of the content or to advertise the content.

## **2. Claim 7**

No argument has been made for claim 7 and it remains to be unpatentable with its independent claim 1.

## **3. Claim 8**

Appellant argues that the combination of the references would not include the feature of claim 8. In paragraph 8 of the final rejection, the examiner started the rejection by referencing Casanova. However, on line 5 of the paragraph, the examiner inadvertently stated that Miller has the non-rotating feature when Miller was not an applied reference for that particular rejection. The paragraph, however, provided the correct reference elements 76,78 as disclosed by Casanova for the non-rotating features. The examiner has made the appropriate correction in this Answer and claim 8 is properly rejected as Casanova teaches the claimed features.

## **4. Claim 9**

Claim 9 is unpatentable over the same reason as indicated with regard to claim 8 above. Casanova's non-rotation feature has at least one tab extending into the pocket, the at least one tab being configured to frictionally engage the battery placed within the

pocket. See pages 11-14 of Casanova publication. Hence, Casanova has already disclosed the claimed feature and applicant has not overcome the rejection.

#### **5. Claim 26**

Appellant argues that the references applied failed to provide any lid and card as required in claim 26. However, Kumakura et al already has a lid and therefore is not deficient of that element. As to combining the card of Casanova with Kumakura et al, the reason for combination is not only to make the resulting combination more compact, but it also focuses on providing an area for advertisement and information. Adding a thin layer of material would have been obvious to one of ordinary skill in the art to inform user of the content or to advertise the content. The claim limitation thus has been met.

#### **6. Claim 27**

Claim 27 is unpatentable for the same reasons set forth with regard to claim 23 and claim 26 above.

#### **7. Claim 28**

Appellant argues that the combination of the references would not include the feature of claim 28. In paragraph 8 of the final rejection, the examiner started the rejection by referencing Casanova. However, on line 5 of the paragraph, the examiner inadvertently stated that Miller has the non-rotating feature when Miller was not an applied reference for that particular rejection. The paragraph, however, provided the

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correct reference elements 76,78 as disclosed by Casanova for the non-rotating features.

The examiner has made the appropriate correction in this Answer and claim 8 is properly rejected as Casanova teaches the claimed features.

#### **8. Claim 29**

Claim 29 is unpatentable over the same reason as indicated with regard to claim 28 above. Casanova's non-rotation feature has at least one tab extending into the pocket, the at least one tab being configured to frictionally engage the battery placed within the pocket. See pages 11-14 of Casanova publication. Hence, Casanova has already disclosed the claimed feature and applicant has not overcome the rejection.

#### **I. Rejection of Claims 21 and 41 under 35 U.S.C. §103(a) as Being Obvious Over PCT Publication WO 01/98171 to Miller in view of the Kallgren '920 patent, the Getz et al. '358 patent and the Douglas '048 patent**

##### **1. Claim 21**

Appellant argues that the examiner applied Getz et al to show that the container of Getz et al can be shrink wrapped. With that teaching, the combination as set forth in the rejection would destroy the holder of Getz et al. It is not clear how appellant arrived with this interpretation when the rejection specifically discussed the overlapping and spacing of the modules in Getz et al. Douglas is the reference that teaches shrink wrapping the base reference Miller and it is never the examiner's intention to shrink wrap Getz et al.

With regard to the issue of separate modules, Douglas has been discussed extensively above in the various rejections on the application of the term “separate” and how the reference reads on the claims. Accordingly, claim 21 is unpatentable.

## **2. Claim 41**

Appellant made the same argument as claim 21. Therefore, the response applies equally to this section.

## **J. Rejection of Claims 21 and 41 under 35 U.S.C. §103(a) as Being Obvious Over Kumakura et al in view of the Kallgren '920 patent, the Getz et al. '358 patent and the Douglas '048 patent**

### **1. Claim 21**

Appellant argues that the examiner applied Getz et al to show that the container of Getz et al can be shrink wrapped. With that teaching, the combination as set forth in the rejection would destroy the holder of Getz et al. It is not clear how appellant arrived with this interpretation when the rejection specifically discussed the overlapping and spacing of the modules in Getz et al. Douglas is the reference that teaches shrink wrapping the base reference Miller and it is never the examiner's intention to shrink wrap Getz et al.

With regard to the issue of separate modules, Douglas has been discussed extensively above in the various rejections on the application of the term “separate” and how the reference reads on the claims. Accordingly, claim 21 is unpatentable.

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**2. Claim 41**

Appellant made the same argument as claim 21. Therefore, the response applies equally to this section.

**K. Withdrawn claims 15-18 and 35-38**

Appellant requests the rejoinder of the claims along with the allowance. However, the request cannot be considered at this time as the Board has not rendered a decision on the patentability of the claims.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

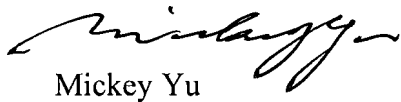
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
STL

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Conferees:

A handwritten signature in black ink, appearing to read "Mickey Yu", with a stylized, cursive script.

Mickey Yu

A handwritten signature in black ink, appearing to read "Janet Baxter", with a stylized, cursive script.

Janet Baxter